



**CITY OF LODI  
COUNCIL COMMUNICATION**

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**AGENDA TITLE:** Authorize Contingency Fee Contract with Folger, Levin & Kahn, LLP, for the Hartford Litigation.

**MEETING DATE:** March 21, 2007 City Council Meeting

**PREPARED BY:** City Attorney's Office

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**RECOMMENDED ACTION:** Authorize Contingency Fee Contract with Folger, Levin & Kahn, LLP, for the Hartford Litigation.


**BACKGROUND INFORMATION:** The City Council approved retention of the law firm of Folger Levin & Kahn on June 2, 2004, to serve as outside counsel for the PCE litigation.

The majority of that litigation has been resolved excepting one party in the Northern Plume, and approximately six parties in the South Central / Western Plume. However, the City's case against its insurance carriers continues. Folger, Levin & Kahn, reflecting its confidence in the case has offered a contingency fee agreement to continue the Hartford case. Folger, Levin & Kahn's proposal is to cap all monthly fees at \$50,000 plus expert fees and costs starting February 1, 2007. Folger, Levin & Kahn would also recover 25% of all recoveries from the City's insurance carriers in excess of \$4 million.

**FISCAL IMPACT:** Monthly Savings of \$150,000 - \$200,000

**FUNDING AVAILABLE:** Water Fund

Approved:

  
Stephen Schwabauer, City Attorney

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APPROVED:

  
Blair King, City Manager

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FOLGER LEVIN & KAHN LLP

March 19, 2007

D. Stephen Schwabauer  
City Attorney  
City of Lodi  
221 W. Pine St.  
Lodi, CA 95240

Re: Hartford Accident and Indemnity Company, et al. v. City of Lodi, San Francisco Superior Court Case No. 323658

Dear Steve:

Folger Levin & Kahn LLP ("FLK") is currently representing the City of Lodi ("City") in the above-referenced litigation ("Hartford Action") pursuant to the June 2, 2004 Agreement to Engage outside Legal Counsel Between The City Of Lodi And Folger Levin & Kahn LLP ("2004 Fee Agreement"). (For purposes of this letter, the term "Litigation" shall mean the pending proceedings in the Hartford Action in the San Francisco Superior Court, any appellate proceedings arising out of or in connection therewith, and any proceedings for the enforcement of any judgment entered in favor of the City therein.) Until now, our representation of the City in the Hartford Action has been on a basis whereby FLK bills the City on a monthly basis for our fees (at reduced rates from our standard hourly rates) and costs consistent with the Fee Agreement. This letter modifies the 2004 Fee Agreement to reflect an alternative fee arrangement with respect to the Hartford Action only under which FLK will handle the remainder of the Litigation, going forward, on a partial contingent basis as follows:

1. This agreement will apply to fees and costs incurred by FLK on and after February 1, 2007. This agreement does not affect outstanding invoice number 100361 in the amount of \$211,159.60 for fees and costs incurred by FLK before February 1, 2007.
2. The City will pay fees to FLK for the time spent by FLK personnel (lawyers, paralegals and case clerks) at the hourly rates agreed to by the City and FLK for such personnel in effect at the time services are rendered, in an amount not to exceed \$50,000 per month. These fee amounts will continue to be billed and paid on a monthly basis, regardless of the status or outcome of the Litigation or the amount of any Recovery (as defined below).
3. The City will pay all out of pocket expenses incurred in connection with the Litigation, regardless of the status or outcome of the Litigation or the amount of any Recovery, including (but not limited to) expenses for travel and lodging, experts, consultants and court

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reporting fees, photocopying, document imaging, telecommunications, computerized legal research, delivery charges and preparation of graphics (including, but not limited to, fees and costs of graphics consultants).

4. In addition to the fees paid pursuant to Paragraph 2 above, FLK will receive 25% of any and all "Recovery" obtained by the City from any and all sources whatsoever, whether by way of settlement, judgment or otherwise. "Recovery" is defined as all monies and other consideration received by the City as a result of or in connection with the Litigation in excess of \$4 million, not including the settlement paid to the City by its primary insurer USF&G or its excess insurer, American Centennial. The City acknowledges that FLK has made no guarantee as to the outcome of the Litigation or as to the amount of any Recovery that the City may obtain as a result of or in connection with the Litigation.

5. If the City rejects a settlement offer or offers that FLK supports, then FLK may elect to revert to receiving payment (in addition to all amounts due under Paragraph 3 above) for the time spent by FLK personnel at the hourly rates agreed to by the City and FLK for such personnel in effect at the time services are rendered, including fees in excess of \$50,000 per month, and the City also agrees to pay FLK 75% of its past fees from February 1, 2007 through the time of the settlement offer. However, the City shall have the sole and absolute right to make decisions regarding the litigation including, but not limited to, accepting a resolution that FLK does not support, without any effect on its fee obligations herein.

6. We do not anticipate any recovery of attorneys' fees in this matter, but in the event any award for attorneys' fees is actually recovered, any and all amounts thus recovered for attorneys' fees and costs, after the date of this agreement, would be included in the Recovery.

We are required by law to advise you that the terms of a contingency fee agreement are not set by law but are negotiable between attorney and client.

If you have any questions concerning the foregoing, please call. If the proposed arrangement is agreeable, please arrange for the appropriate signatures on the enclosed additional copy of the letter and return it to me at your earliest convenience.

Very truly yours,

Gregory D. Call

Enclosure

Agreed & Accepted

<b>CITY OF LODI</b>	<b>APPROVED AS TO FORM:</b>
_____ Signature	_____ D. Stephen Schwabauer City Attorney
_____ Printed Name	ATTEST:
_____ Title	_____ Randi Johl City Clerk
_____ Date	
<b>FOLGER LEVIN &amp; KAHN, LLP</b>	
_____ Signature	
_____ Printed Name	
_____ Title	
_____ Date	